

**SEC ISSUES RULES  
ACCELERATING FILING OF 10-Ks AND 10-Qs**

The SEC recently issued rules requiring companies that fit the criteria of an “accelerated filer” to file Forms 10-K and 10-Q on an accelerated basis. The rules are subject to a 3 year phase-in period.

**I. Accelerated Filing of 10-Ks and 10-Qs:**

- Accelerated Filers. Only US companies that meet the definition of “accelerated filer” are subject to the new filing deadlines. The accelerated deadlines apply to a company after it first meets the following criteria:
  - has a public float of at least \$75 million, tested as of the last business day of its most recently completed second fiscal quarter; and
  - as of the end of its fiscal year, has been subject to Exchange Act reporting requirements for at least 12 months and has previously filed at least one annual report.

Thus, as a practical matter, calendar year companies will know now if they will be accelerated filers when tested on December 31, 2002. Once a company becomes subject to accelerated reporting, it remains so unless it becomes eligible to use reporting forms for small business issuers. For example, a company may meet the \$75 million public float test on June 30, 2002, but fall below it prior to year end or thereafter. Nonetheless, the company will be an accelerated filer until its annual revenues and public float fall below \$25 million and it meets the other criteria of a small business issuer.

- Phase-In Period. The accelerated filing will be implemented as follows:

For Fiscal Years Ending On or After:	Form 10-K Deadline For such Fiscal Year End:	Form 10-Q Deadline For Quarters Following such Fiscal Year End
December 15, 2002	90 days after year end	45 days after quarter end
December 15, 2003	75 days after year end	40 days after quarter end
December 15, 2004	60 days after year end	35 days after quarter end

For example, if a calendar year company determines that it is an “accelerated filer” as of the end of 2002, its next 10-K filing and its three 10-Qs for fiscal 2003 will continue to have the 90/45 day filing deadlines. However, its 10-K for 2003 will be due on March 15, 2004 (75 days), and each of its 10-Qs for fiscal 2004 will be due 40 days after

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quarter end (May 10, August 9 and November 9, 2004). Its 10-K for 2004 will be due on March 1, 2005 (60 days) and each of its 10-Qs for fiscal 2005 will be due 35 days after quarter end (May 5, August 4 and November 4, 2005).

- Other SEC Filings. The SEC approved conforming amendments to its rules relating to the timeliness of information included in other SEC filings, such as registration statements and proxy statements. Information included in these filings will need to be at least as current as information required in periodic reports.
- Calculation of Public Float in Form 10-K. All companies, regardless of size, will be required to disclose on the cover page of their Forms 10-K, their public float as computed on the last business day of the company's most recently completed second fiscal quarter. Previously, companies were required to calculate public float as of a date within 60 days prior to the Form 10-K filing.

## **II. Availability of Filings on Websites:**

- New Disclosure Required. The new rules require that an "accelerated filer" disclose in its Form 10-K:
  - The company's website address, if it has one;
  - Whether the company makes available free of charge on or through its website its Forms 10-K, 10-Q and 8-K filings (and all amendments) as soon as reasonably practicable after they are electronically filed with the SEC; and
  - If a company does not make filings available in this way, the reasons it does not do so and whether it voluntarily will provide paper or electronic copies of filings at no cost upon request.
- Hyperlinking to SEC Deemed Sufficient. In a change from its position in the proposing release, the SEC provided that hyperlinking to company reports on the SEC's EDGAR website is an acceptable way for companies to disclose that they make their filings available as soon as reasonably practicable. The SEC also noted that hyperlinking to a third-party service is acceptable, as long as the reports are available in the appropriate time frame and free of charge to the user. In each case, the hyperlink should be directly to the company's reports (or, in the case of Edgar to the list of company reports), and not to the home page or general search page of a third-party service.
- Format for display of reports. The rules require that the electronic format used to display the reports on the website cannot be unduly burdensome. In the past, the SEC has interpreted this requirement to allow the use of the PDF format as long as the recipient is given the necessary software and technical assistance to use PDF at no cost.
- Recommendations. The SEC recommended that companies provide website access to previous reports for at least a 12-month period, or longer through an archived portion of their website. The SEC also encouraged, but did not require, that companies post other SEC filings, such as proxy statements and registration statements, on their websites.
- Effective Date. The disclosure requirements will be in effect for Forms 10-K filed with respect to fiscal years ending after December 15, 2002. This means that companies with a December 31 year-end will have to provide the required disclosure in their next Form 10-K and must make that Form 10-K, and Forms 10-Q and 8-K filed following their year end, promptly available on their websites.

**Contact Information**

If you have any questions or would like to learn more about the new rules, please contact the lawyer who normally represents you, or any of the lawyers listed below involved in the preparation of this SEC Alert.

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